

## MINUTES

### **WARRICK COUNTY AREA BOARD OF ZONING APPEALS**

Regular meeting held in the Commissioners Meeting Room,  
Third Floor, Historic Courthouse,  
Boonville, Indiana  
April 24, 2017, at 6:00 P.M.

#### **PLEDGE OF ALLEGIANCE**

**MEMBERS PRESENT:** Jeff Valiant, Chairman; Tina Baxter (arrived at 6:05 p.m.); Terry Dayvolt, Doris Horn, Mike Moesner, Jeff Willis and Mike Winge.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer, Staff.

**MEMBERS ABSENT:** None

**MINUTES:** Upon a motion made by Doris Horn and seconded by Mike Winge the Minutes of the last regular meeting held February 27, 2017 were approved as circulated. Upon a motion made by Terry Dayvolt and seconded by Doris Horn the no meeting Minutes of March 27, 2017, were approved as circulated.

The Chairman explained the Rules of Procedure.

#### **SPECIAL USE:**

##### **BZA-SU-17-05**

**APPLICANT:** Casey's Marketing Company by Roger Henson, Construction Supervisor

**OWNER:** Bread of Life Ministries INC. by Roger Henson POA & Christopher W. Taylor by Roger Henson, POA

**PREMISES AFFECTED:** Property located on the N side of SR 68 approximately 0' NW of the intersection formed by SR 68 and SR 61, Lynnville Twn, *(complete legal on file)*

**NATURE OF CASE:** Applicant requests a Special Use (SU8) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for a 3' by 11' Electronic Message Board in a "C-4" General Commercial District. *Advertised in the Standard April 13, 2017.*

Roger Henson was present.

The Chairman called for a staff report.

Mrs. Rector said they have all of the green cards from certified mail of notice of this meeting to the adjacent property owners. She said Bread of Life Ministries was located on this property and the property to the west and southwest is zoned "R-1A". She said all other surrounding zoning is "C-4" General Commercial. She added there is no flood plain on the property and it has existing entrances on Main Street (SR 61) and SR 68. She said we are waiting on confirmation from the State the driveways are adequate for the proposed Casey's General Store before issuing the ILP for the structure. She said Casey's Marketing Company has a recorded power of attorney to represent Bread of Life Ministries and

Christopher Taylor. She added we sent a letter to the Town Board of Lynnville for comments which Doris said the Town received it and they don't have any objections to the signage. She said the proposed use statement is "the purpose of this Special Use Application is to allow Casey's Marketing Company the ability to install and operate a digital sign for the purpose of displaying fuel prices. The type of sign being proposed is typical to what is used by similar businesses in the area and in all states Casey's Marketing Company operates within." She added they have answered all of the proposed use statements and any approval would be subject to the ILP being obtained for the proposed store since this is considered an on premise sign.

Mr. Henson said it is pretty much a standard gas price sign.

The Chairman called for questions from the Board.

Mrs. Rector asked how high it was.

Mr. Henson said it to the top it is 25 feet.

Mike Moesner asked if it is designed so it can be seen from the interstate.

Mr. Henson said not this one. He said most interstate signs are anywhere from 60' to 100' tall and this is pretty similar to the sign across the street from this location. He said 25' is to the top of the weather vane on top. He said it is 14' to the bottom of the actual digital sign which displays the gas price.

Tina Baxter attended the meeting at this time.

Ascertaining there were no other questions from the Board and being no remonstrators present, the Chairman called for a motion.

Mike Winge made a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.

2. Subject to all public utility easements and facilities in place.
3. Subject to an Improvement Location Permit being obtained for the new building.
4. Subject to an Improvement Location Permit being obtained for the new message board.
5. Subject to any required Building Permits being obtained.
6. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
7. Subject to no use of the words, “stop”, “danger”, “look”, or any other word which would confuse traffic.
8. Subject to no revolving beams of light or strobe lights.

The motion was seconded by Doris Horn and unanimously carried.

Mrs. Rector said the approval will be ready on Wednesday and asked if he wanted it mailed or emailed.

Mr. Henson said to mail it to the contact at corporate office.

**VARIANCE:**

**BZA-V-17-04**

**APPLICANT & OWNER:** Corey & Megan Ainscough

**PREMISES AFFECTED:** Property located on the N side of Ferstel Rd. approximately 100' E of the intersection formed by Ferstel Rd. and Magnolia Dr. Ohio Twp. 6344 *Ferstel Rd.*

**NATURE OF CASE:** Applicant requests a variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for a SFD on a property with an existing SFD to be removed in an “A” Agricultural Zoned District. *Advertised in the Standard April 13, 2017.*

Corey Ainscough was present.

The Chairman called for a staff report.

Mrs. Rector said they have all the green cards from certified mail of notice of this meeting to the adjacent property owners. She there is an existing house, barn and garage on the property and the property to the north, west and east is zoned Agriculture with residences and to the south is mostly Agriculture with some R-2 to the southwest being Cypress Lake Estates. She said there is no flood plain on the property and they have an existing driveway on Ferstel Road. She said the proposed use statement is “Applicant is proposing keeping the existing dwelling erect during construction of the new dwelling. Upon completion of new dwelling, the existing dwelling, barn and garage will be removed in their entirety.” She said the application is in order and usually the Board will give them a certain amount of time to get the house torn down after the new house has been constructed.

Mr. Ainscough had nothing to add.

The Chairman called for questions from the Board.

Attorney Doll asked if Mr. Ainscough owned any other property with a residence where he can reside while building the new home.

Mr. Ainscough said unfortunately no. He said that is why they want to keep the existing house in that spot.

Attorney Doll said he thought as much but he wanted to hear that. He said there aren't friends or family they could stay with either.

Mr. Ainscough said no not really.

Attorney Doll said so they really need to stay in the existing dwelling until the new dwelling is done then they can live within a deadline to remove the old structures.

Mr. Ainscough said they are requesting a 90 day tear down period after they have full occupancy.

Attorney Doll said so three months.

Terry Dayvolt said so he is telling them that he wants a 90 day time limit after they move into the new house to tear down the old house.

Mr. Ainscough said that is correct. He said he didn't believe it would take that long – it really depends upon the time of year they get to move into the new house and if the equipment can get in there and be able to remove the existing structures.

Terry Dayvolt asked when they expect to start construction if they get this approval.

Mr. Ainscough said start time would be in June or July and so that would typically put them into the February completion time and in the winter months it is hard to tell with the rain and Spring weather will start and that is why he is asking for a 90 day leeway in order to tear the structures down based on the rainy season. He said if that is a problem he could try to pull that back a bit but he wanted to have a little of room based off getting the equipment into the property in order to tear down the existing structures.

Jeff Valiant said especially with the winter he will have no idea what the weather will do or be like.

Mr. Ainscough said if it would be like this year it would be okay.

Ascertaining there were no other questions from the Board, the Chairman called for remonstrators.

Gary Gardner said he really isn't a remonstrator, he just has a question. He said he lives across on Ferstel Road and his only question is with an abundance of caution. He said thirty years ago the gentleman who owned the property at the time blocked the drain and he went through a lot of problems to finally get the County to open it back up. He asked if Mr. Ainscough had any intention of doing anything to the French drain to north of Ferstel Road.

Mr. Ainscough said he won't be touching that at all.

Mr. Gardner said welcome to the neighborhood.

Jeff Valiant reiterated he plans on starting construction in June or July.

Terry Dayvolt asked if he is currently living on the property to which Mr. Ainscough said he is.

Ascertaining there were no other remonstrators present, the Chairman called for a motion.

Mike Moesner made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is they need to be living there until they have the new house completed to move into and this is the only residence or property he owns which has such residence.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
  - a) Subject to an Improvement Location Permit being obtained.

- b) Subject to a Building Permit being obtained.
- c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
- d) Subject to all utility easement and facilities in place.
- e) Subject to the existing SFD being removed within 3 months from certificate of occupancy being issued.

The motion was seconded by Mike Winge and unanimously carried.

Mrs. Rector said the approval would be done on Wednesday and he could obtain his permits.

**BZA-V-17-06**

**APPLICANT:** Sign Crafters by Mike Seibeking, Sales Rep.

**OWNER:** Abundant Life Church by Troy Boulware, Minister

**PREMISES AFFECTED:** Property located on the S side of Sharon Road approximately 200' W of the intersection formed by Sharon Rd and Lenn Rd, Ohio Twp, *(complete legal on file)* 7333 Sharon Rd

**NATURE OF CASE:** Applicant requests a variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for a message board located within 25' building set-back line and not meeting minimum front yard requirements in an "R-1A" One Family Dwelling District. *Advertised in the Standard April 13, 2017.*

Mike Siebeking and Troy Boulware were present.

The Chairman called for a staff report.

Mrs. Rector said we still need green cards from Kent & Lashea Schmitt; Bernard & Gail Rottman; Dawna Battram and Etha & Megahn Schur. She said we do have the white pay receipts showing they were mailed to the correct address before the 21 day mailing deadline. She explained the existing use is Abundant Life Church and the property to the north is zoned Agriculture, Sharon School and R-2, Sharon Meadows Sub; property to the east is R-1A, Cliftmeere Sub; and to the west is zoned R-1A, Augusta Hills Sub; and property to the south is zoned R-2, Lakevale Estates. She said part of the property on the south and west sides are in the AE Flood Plain however not where the sign will be located. She explained there is an existing driveway off of Sharon Rd. She added they have an approved special use for an illuminated ID sign and a double faced 3'x8' electronic message center that was approved February 27, 2017. She said there was a question regarding the right of way for Sharon Road and since this property is R-1A there is a 25 foot setback line. She said they are proposing the sign to be 5' off the property line instead of 25' and if the property were zoned commercial they could have a 5' yard. She said any approval should be subject to the Special Use conditions and the application is in order. She added she did show this to County Engineer, Bobby Howard who said there is no problem with sight distance on the location of this sign and you can tell by the aerial photo there will not be a problem. She said if they put the sign back 25 feet it would be back on top of the church and you wouldn't be able to see it from the road.

Terry Dayvolt said so the church is already in the 25 foot setback.

Mrs. Rector said the church isn't but the existing sign is.

Terry Dayvolt said she stated the sign would be on top of the building if it was...

Mike Siebeking said it would be next to the flagpole.

Mrs. Rector said she exaggerated a little bit Terry.

Terry Dayvolt said if they rezoned the property to commercial they wouldn't have any problem with the setback.

Mrs. Rector said that is correct but that would basically be spot zoning because it is all residential there and the church has been there for a lot of years.

Attorney Doll said what they are really doing is putting a new sign where the old sign was.

Mike Siebeking said that is exactly right, in the same exact spot.

Ascertaining there were no other questions from the Board and being no remonstrators present, the Chairman called for a motion.

Mike Winge made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is it is replacing an existing sign in exactly the same place and the Variance brings the sign location into conformity to where it would be allowed in a commercial district and it has been reviewed by the County Engineer who has no objection.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.

7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
  - a) Subject to an Improvement Location Permit being obtained.
  - b) Subject to a Building Permit being obtained.
  - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
  - d) Subject to all utility easement and facilities in place.
  - e) Subject to all conditions on BZA-SU-17-03.

The motion was seconded by Doris Horn and unanimously carried.

Mrs. Rector said the approval could be picked up on Wednesday.

**BZA-V-17-07**

**APPLICANT:** Barrington Custom Homes by Chris Miller, Mbr.

**OWNER:** Brian & Marjorie Blalock

**PREMISES AFFECTED:** Property located on the S side of Willow Bend Dr approximately 220' W of the intersection formed by Willow Bend Dr. and Windhill Lane. Lot No. 18 in Seaton Place Subdivision. Ohio Twp. 8955 *Willow Bend Dr.*

**NATURE OF CASE:** Applicant requests a variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for an addition to a residence not meeting minimum 25' rear yard requirements in an "R-1A" Single Family Dwelling District. *Advertised in the Standard April 13, 2017.*

Chris Wischer, Attorney, Brian Blalock and Bruce Miller were present.

The Chairman called for a staff report.

Mrs. Rector said we have all the green cards from certified mail of notice except for John & Kathy Greaney. She explained this is an existing house on Lot 18 in Seaton Place and all surrounding property are lots in Seaton Place and zoned "R-1A" with houses. She added there is no flood plain on the property and there is an existing driveway off Willow Bend Drive. She stated the proposed use statement is

“variance in the 25 feet backyard setback. The proposed garage addition will encroach 11 feet into the 25 foot backyard setback.” She said we do have a letter of remonstrance from Darrel R. Stevens, President, Seaton Place Property Owners Association stating “Please be advised that the board of Directors and the Officers of the Seaton Place Property Owners Association objects to the request for a variance in the identified docket number (BZA-V-17-07). We oppose this because it violates the requirements as set forth in the comprehensive zoning ordinance in effect for Warrick County to allow an addition to the residence not meeting the minimum of 25 feet rear yard requirement in an R-1A one family zoning district. We are in the process of having each owner sign a petition either opposing or agreeing to this variance. Thank you for your consideration.” She said the application is in order.

Chris Wischer said as in the last Variance where they granted a setback issue, this is a request for relaxation of setback and he represents good friends of his, Brian and Marjorie Blalock who live at 8955 Willow Bend Road, Seaton Place. He said they, like a lot of folks of their age, they have acquired more vehicles and or more stuff than their current two car garage will allow storage of and are in need for additional space. He said their builder, Bruce Miller, is here as well and they are of a desire to construct a 21 foot addition to the property which will be an additional garage; it would be an attached garage to the existing structure. He said the garage doors will face to the west and essentially you know we are talking about an encroachment of eleven feet into the 25 foot setback. He then passed out some pictures of the house and property to the Board. (copies on file) the owner took of the back yard. He said the garage will still be 14 feet from the property line and the rear neighbor there has a substantial retaining wall which you see in the pictures plus a fence on top of the retaining wall that is within their 25 feet. He said and they have substantial trees and foliage there that would block their view. He said he also has a Google Earth type picture where they can see the rear neighbor with the pool and the other landscaping, retaining wall and fence within that same setback. He said he also has taken some pictures from the street view on Google Earth that show you that you won’t be able to see the garage from the street so other than the rear neighbor we are not sure why there would be much of an objection because it is not really going to cause anybody else any discomfort at all.

Mr. Wischer said as far as some of the criteria that we have to consider for the Variance, this type of garage is not unusual. He said other properties in the subdivision happen to have more than a two car garage and we don’t believe that having this size of a garage in this location is going to be injurious to the public health, safety and welfare. He said the value question; a substantial improvement and addition to a home is going to increase values not decrease them and again, other than the rear neighbor, who also has encroachments into their setback, he is not sure what the harm would be to anyone else in the subdivision. He said the need was not caused by anything the Blalocks’ did. He said they do have a need for additional garage and given the location and the size of the lot and the layout of their existing home, there is no way for them to build the addition without needing a Variance and so the Variance requested is – without that there is a hardship on the Blalocks’ in that they are not able to use the property in the way that they desire. He said essentially that about covers it. He said this is not a situation where there are no - there are covenants in Seaton Place but the covenants do not restrict construction this close to the boundary line. He said the Homeowners Association has the authority to enforce the covenants and this is not violating what the Homeowners Association has to enforce. He said with that he will answer any questions they have for him or for Mr. Blalock or Mr. Miller; otherwise we will see what the neighbors have to say who may be here and see if they can answer those questions.

Mike Winge said his question would be if it would affect the covenants.

Mr. Wischer said it does not affect the covenants. He said the stated objection he has seen from the neighbors simply says they don’t want it because the code says you can’t have it but as you know you have a process where by someone can come and ask you at your over sight if you determine that it meets

the criteria that is not going to be a hindrance to the neighbors and that it is going to add to their usage of their property then he believes they can grant that.

Mrs. Rector said we don't enforce private restrictions anyway.

Mr. Wischer said that is correct and he wasn't suggesting in any way they would. He was just saying if there was one they would have to ....

Mike Moesner asked if the existing driveway will be extended back as well.

Mr. Wischer said he assumed so.

Terry Dayvolt said so this hardship is self-created then.

Mr. Wischer, said they have not ... he has had this discussion so many times about what "self-created hardship" means. He said they have not done anything themselves to this property that creates the need for the Variance. He said the need is created by their desire to use the property in the same way that the gentleman that was here before. He said his need was created by his desire to build an additional house. He said the Blalocks' have not - had they constructed an out building in a location and then couldn't construct something there or if they had dug a creek or something on the property themselves that would then create the Variance – the only thing that creates the Variance is their need to use the property like a lot of people do for additional storage space.

Doris Horn said the difference between this and the gentleman previously is there is farm ground behind him versus having a beautiful home in the back yard.

Mr. Wischer said he understands what she is describing.

Attorney Doll said also the other Variance is temporary; it is for a short duration during the period of construction. He said he isn't pre-judging if they will or won't approve this, but if they grant this Variance it will be permanent. He said it will go with the house for as long as the house is there.

Mike Winge said don't we do quite a few of those – permanent ones.

Attorney Doll said the church variance is permanent.

Terry Dayvolt said they gave the church a Variance but it was...

Attorney Doll said against the public right of way or street as opposed to a back yard.

Terry Dayvolt said yes but it was out of need because it was already there.

Attorney Doll said that sign had been there for years.

Attorney Wischer said to argue, you have these cases all the time too where someone constructs something and then comes and asks for a Variance and forgiveness. He said to some extent that is self-created because they did it themselves before they asked.

Mike Winge said we get a lot of that.

Mr. Wischer said the Blalocks' have done nothing to this property that creates the need for the Variance; they simply want to build something - like a lot of the ones you approve – that extends into the setback and it is not in the front so it won't...it is only going to affect the rear of the property, perhaps those neighbors in the back.

Tina Baxter said they said they need more storage; is it car storage.

Mr. Wischer said it is a car.

Mrs. Baxter asked if they have a storage area they could put the car. She asked if they were all being driven.

Mr. Wischer said they have a two car garage now and they have three cars. He said he has a three car garage at his house with two cars in it and he isn't sure how he would ever get three cars in it. He said sometimes we ... but they do have a third car.

Mrs. Baxter said she was just wondering if this was for extra storage for a ...

Mr. Wischer said parking a third car in the driveway creates its own concerns about weather and not alleging anything would happen to it but sitting outside is certainly not preferred as having it inside.

Attorney Doll asked if there are three drivers living in the house.

Mr. Wischer said no yet; they have an almost teenage son. He said this is a request for an additional two cars and they do have a third car which a lot of folks have. He said and while you are building it if you expect you are going to have another car in the future or just additional things you store in a garage...even a one car garage would require a Variance. He said they can't even fit a one car addition into the space provided.

Mike Moesner said in looking at the pictures here it looks like with the retaining wall and fence and tree line, the neighbors really couldn't see it anyway.

Chris Wischer said it would be difficult.

Attorney Doll asked if the proposed structure is going to be the same style of architecture of the house.

Mr. Wischer said it was.

Brian Blalock said the roof line will just continue on and then the garage would look just like the other garage that is there.

Tina Baxter said so the problem is they (neighbors) are afraid if the Variance is created that too many others can be created in the same subdivision.

Mr. Wischer said that is a question for them but if that is the concern, if you look at the overhead, the other properties in that general area, three of them already have swimming pools or substantial trees back in that area and it is unlikely. He said again, as he said, a garage 14 feet from the property line they don't feel is a detriment nor creates any hardship or problems for anyone and so if someone else would want the same thing somewhere else they think the same thing would hold true. He said the reality is in at least this general vicinity there is not many opportunities for this to happen; this is a unique property in that regard.

Tina Baxter said there are no problems with drainage as far as she can see, it looks pretty flat.

Chris Wischer said it actually goes downhill so everything should drain properly.

Jeff Valiant called for remonstrators. He said he would call those against the project first and asked they refrain from repeating the same comments and please sign in and state their name for the record.

Thomas Southwood said he is one of three board members who will speak on this tonight. He said he and his wife Marilyn have lived in Seaton Place longer than any other neighbor, for almost 20 years. He said he wants to first of all set a time line of what has happened here in our subdivision and go back the last few weeks so everybody is aware of what has taken place. He said on April 3, 2017, a letter was sent to several neighbors requesting the Variance from the Blalocks and included in the registered letter sent by Barrington, that filed for the Variance on March 31, 2017, was a site plan, aerial view and also notice of the public hearing tonight. He said the Seaton Place Board of Directors and officers discussed the request for the Variance and drafted a letter, signed by Darrel, that was just read and we strongly oppose this Variance being considered because of the violation that it creates with the 25 foot setback by Warrick County. He said on April 15, 2017, our association emailed the Blalocks letter and also their letter, Barrington's information requesting the Variance and also the notice of public hearing and copy of the site plan, aerial view from the Seaton Place Property Owners Association opposing the Variance to all homeowners. He said they requested a vote of approval or opposition to the Variance by April 20, 2017. He said that was not sent to the Blalocks or Barrington as they initiated the request and we counted them as in favor. He said this was done by email not a door to door petition so not to make any of the neighbors feel uncomfortable. He said the Blalocks emailed all of the homeowners on April 17, 2017 explaining their proposed addition and offered to meet with anyone with or without their builder that had concerns or issues. He said as of this meeting tonight out of 18 property owners we have ten homeowners opposing the Variance, two in favor being the Blalocks and Barrington and six have responded as neutral or not responded. He asked they please note they feel Barrington and the Blalocks have violated the conditions, restrictions, reservations and protective covenants of the Seaton Place Subdivision by not presenting this to the architectural committee first. He said on page 3, number 4 of our covenants it states "all construction and related activity in the subdivision shall be subject to the prior approval of the architectural committee". He said ironically these covenants were developed by Barrington when they developed Seaton Place on November 28, 1994. He said the last request that was made to the architectural committee was made on 6/21/08 by the Stillwells requesting approval to add a covered porch attached to their existing home along with an in ground pool and fence at 8933 Willow Bend Drive. He said this home is currently occupied by the Hurst family. He said that was approved on 6/21/08 and did not require a Variance. He said the code of by-laws of Seaton Place property owners association states under article 4 section 4.5(c) that one of the duties of the board are to enforce all covenants and take such action as may be related there to. He said this evening, with us we have eight of the ten homeowners representing that are opposing this Variance and including the home directly behind the Blalocks. He said board member Doug Duell will cover other comments and observations followed by Kathy Greaney, treasurer of our association.

Doug Duell, 8988 Willow Bend, said he lives across the street from the Blalocks, one house to the west. He said he does oppose this Variance; from our property you can see where this garage is at – actually from all the properties you can see this area and he opposes this because he thinks the setback is for a reason of uniformity of the properties in the subdivision. He said most of the lots are very similar in size; you have certain size lot, you have a certain area you can build your house on. He said he thinks that is what everybody bought into in that neighborhood – that continuity of size of the houses and location on the lot. He said through a little bit of research of the Variances in Warrick County, it looks to him that there are five things that must be met to grant a Variance and he would like to go over them on this application. He said first is *there must be a particular circumstance to the size or shape of the land parcel that such little application of the setback provision impair the owners' rights of some reasonable use; absent of a particular circumstance, the Variance shall not be granted.* He said the Blalock property

does not meet this particular circumstance requirement. He said the lot size and shape does not impair the use because of the setback requirement. He said it is similar to the other houses in the neighborhood. He said there is a straight driveway into a two car garage.

He said number 2 *is the particular circumstance causing the hardship must be particular to the property as issue as well and not common to all properties in the neighborhood.* He said again, there is no particular circumstance so implying to this section is irrelevant. He said it is very similar to the design, as they can see in pictures, of the other properties in the neighborhood. He said number 3 *is if a particular circumstance is found to exist the petition must show a Variance is required to preserve a substantial property right, it is not enough that the denial may interfere with the petitioner's opportunity to increase their property value or sell their property at a greater profit.* He said a Variance would not preserve a substantial property right, they are denied reasonable, economic use of the property by virtue of the setback requirement. He said number 4 *the alleged hardship cannot be self-created by the person with the interest in the property.* He said this "alleged hardship" is arguably self-created; the issue of storing a car purchase knowing you only have a two car garage. He said the Blalocks built the house; they didn't buy it already built, they built it with a two car garage. He said there are two licensed drivers in the home and they have had two cars until he thinks last year and they bought a third car which I think has been in a storage unit, so buying a third car knowing you have a two car garage – you created the problem.

He said number 5 *is the Variance cannot be a detriment to the adjacent property owners or he neighbors as a whole.* He said a detriment, he doesn't know if he would call the addition a detriment – it is hard to really measure. He said as a property owner when you look across the street and you look at another piece of property you have an opinion whether that looks good to you or not. He said in his opinion it does not. He said for the neighbor directly behind this the building will be 14 feet from the back property line and he would think that is very close. He said it is raised over there so he thinks they will see a lot of roof and gutter and he just doesn't think that would look very good. He said the side neighbors – the same thing; you can see this area and what to one person is a detriment and what is to another is going to vary but in his opinion he doesn't think this will look right because it will go into the setback which will be different than the other houses.

Mike Winge said he said they only had the two cars and one was in storage and they didn't create the problem, what happens with the teenager if they don't have a garage and they have to get a car for the teenager.

Mr. Duell said they have a two car garage and our neighborhood covenants allow you to park two cars in the driveway, so you can have four cars at this house. He said it is true; most of the houses in the neighborhood have three or four car garages. He said there are a couple of two car garages in the neighborhood but you can have four cars – two outside and two in the garage.

Mike Winge said but they would have to sit outside in the weather.

Jeff Willis asked if he lives across the street to the east or to the west.

Mr. Duell said he lives to the west. He said he lives right on the corner of Frame Road and Willow Bend.

Jeff Willis asked if he has two parcels there with his lot.

Mr. Duell said he bought two lots and the reason was because his house is long and it wouldn't fit within ...

Jeff Willis said we were talking about the conformity of the neighborhood and how everybody was doing that and he thought one of the houses looks like it is on two lots and it is his house.

Mr. Duell said it wouldn't fit on one lot and he can't remember exactly what happened but something happened when the neighbor next to them built their house they encroached on a property line and so the lot next to the fence was made a little bit smaller so it was really perfect to make it my home site.

Jeff Willis said sometimes things work out that way but that was the question he had.

Terry Dayvolt asked what they did on that encroachment.

Mr. Duell asked on his house.

Mr. Dayvolt said no, on the neighbor's house.

Mr. Duell said he didn't live there at that time. He said when he bought the lots the lot next to the fence was a little bit smaller as he remembers. He said he has lived there for about twelve years. He said the lot was smaller by maybe about 10 or 15 feet and supposedly there were two property lines that were moved a little bit. He said still the size of the lot was sizable for the neighborhood to build the type of house that the covenants require but that situation was fixed before he ever bought the land.

Mike Winge said but he bought another lot so he could build his house bigger.

Mr. Duell said it was sold as two lots – his house wouldn't fit on one lot he didn't believe.

Mike Winge said so the lots were designed for a house but you wanted another house or a bigger house. Mr. Duell said the lots were sold to him as a package deal, so yes. He said the procedure in the neighborhood is the architectural committee looks at the plans and approves or not approves and my house was approved.

Jeff Willis said in looking at the pictures of the back yard, it looks like there is a retaining wall that the neighbor has for their pool and it looks like it is 5-6 feet tall at some points. He asked at what point does it ... does a retaining wall become a structure. He said it is holding in the pool and dirt and gravel. He said it is maybe not in the utility easement but it is within the 25 foot setback yard.

Mr. Duell said their neighborhood is built on a slant. He said he thinks Frame Road is one of the highest points in Warrick County, so the whole neighborhood goes downhill. He said there are retaining walls all over this neighborhood.

Jeff Willis said he isn't against retaining walls he is just trying to balance questions on both sides.

Inaudible discussion from the Board ensued.

Mrs. Rector said she was asked about pools and stated we do not have a setback for pools, they can be placed in the rear yard as long as they are not located within any easements. She said they don't have to be ten feet away from the house or anything and that has been verified with the Building Department and the attorney. She said the pools are fine as long as they are not within any easements and they have obtained permits for them.

Doris Horn said and they are not obstructing any views where a garage would.

Jeff Willis said looking out the back window it is as tall as the fence.

Kathy Greaney said she is the treasurer for the association but more importantly she and her husband own the home that is immediately adjacent to the Blalock home from the rear. She said she knows some of them had specific questions about that so the association felt like it was most relevant for one of them to be here and so she is but obviously, as they can imagine, her husband and her have not been interested in being in opposition to our immediate neighbors – this is not a comfortable spot for us to be in. She said with that said, when they purchased the home we were quite pleased with the fact that the lots in this subdivision were quite a bit larger than the lots in their old subdivision and that they would no longer be so immediately close to their neighbor's structures because there is more space between the homes. She said as they started to evaluate this and think about it and try to be thoughtful about it, knowing that maybe someday they would want to add to their own property somewhere, they didn't want to be hasty about. She said her question was what was the question for the setback requirement, what was it intended to protect. She said there is a whole litany of things in the ordinance that speak to that; some of which are greens capes, aesthetics and so this probably falls within that purview in terms of...our biggest concern is obviously proximity and visibility. She said one of them asked whether or not we would be able to see this – we can see the roofline now and when it comes eleven feet closer to our back property line we will absolutely be able to see it that much better. She said it is a visibility issue but for her, when she looks at this trying to be objective about it, she recognized that is really a matter of opinion as Mr. Duell stated. She said it is a matter of opinion whether or not you agree with her that it is an aesthetics and green scape issue. She said what she found in really at the ordinance was this whole notion that in order for them to grant a variance it says that there shall not be a variance – you shall not grant it – unless there is a peculiar circumstance with regard to size or shape and we just don't have that here and so she can't see how we can get past section one of their own ordinance to even get to the other issues. She said it has been frustrating for them because seeing that in the ordinance and having shared that with the Blalocks this morning in an email, she really thought they would come to the point of saying "you know what, we don't want to cause this tension with our neighbors we just want to let it go, we are going to drop it, you are right. We don't need that." She said that didn't happen and we are here and we are all in this uncomfortable position so she has to speak her mind and say it doesn't meet the peculiar circumstance. She said that is evidence by the fact there is a house and two car garage there already, so it is not impairing their reasonable use – not their desired use as the attorney stated – but their reasonable use of the property. She said they are getting that reasonable use out of and she is happy of them to do that and she doesn't begrudge them wanting another garage, she gets that. She said they don't have any space in their garage either but at this point it is the pro and con of living in a subdivision; if you lived in a scattered lot situation you could build a lot easier on your own property but in this scenario, by your own recognition, requiring notice go to them, they have invested interest here and this isn't what they bargained for when they bought the house. She said that is all she has unless they have questions.

Mike Winge asked if her garage is two car or four car.

Mrs. Greaney said her garage is a three car garage and arguably it is two and a half, they couldn't get three cars in there if they wanted but they call it a three car garage.

Jeff Willis asked if the pool was there when she bought the house.

Mrs. Greaney said it was there.

Jeff Willis said and the retaining wall because if he (Blalock) looks out of his back window it is really tall.

Mrs. Greaney said it was there and it was put in around 2005 which was two owners ago. She said she can't speak to it too much other than it is there and it holds the pool in.

Mike Moesner asked how far the wall is from the fence on the subject property.

Mrs. Greaney said she isn't sure she knows the answer to that. She said probably six to eight feet.

Mr. Blalock said it was six to seven or eight feet.

Terry Dayvolt asked if the fence is sitting on the property line or is the wall sitting on the line.

Mrs. Greaney said they are both back from the line and out of the easements.

Doris Horn asked how tall the retaining wall is.

Mrs. Greaney said if she had to guess, in some places it is a foot off the ground and in others it is maybe five and a half feet at the deepest which is way over on the corner.

Jeff Valiant questioned the aerial photo asking which her house was so he was sure he had his directions right.

Mrs. Greaney explained where the high and low spots were on the aerial map and said the highest spot is about eye level to her.

Mrs. Rector said they can be up to six feet high.

Ascertaining there were no other questions for Mrs. Greaney, the Chairman called for other remonstrators. Being none he called the petitioners forward for rebuttal.

Chris Wischer said starting from the beginning with the time line of the homeowners association; the adjoiningers were notified as required and the homeowners association sent out an email but the Blalocks weren't included in that so they didn't realize this was creating a stir. He said they didn't have an opportunity to respond until recently and they did that once they became aware this was going on. He said there was really no point in going to the architectural review committee in the subdivision until they have a Variance to allow them to build what they want to build. He said they are supposed to review whether it meets the architectural compliance and be substantially similar to other structures and this will be as they said but taking that to them and going through that process didn't make sense until they went through this process. He said in talking about uniformity and unique properties and all of those things if you applied the ordinance the way they suggest, they wouldn't grant a single variance to anybody because it is always the case that somebody could not build. He said it was said that most people out there have three or four car garages, the Blalocks don't and he would submit to them a reasonable use of their property would be similar use to everyone else out there in which case most people have a three or four car garage and the Blalocks aren't able to do that. He said they can fit a three or four car garage on their property but only with a Variance. He said this will be eleven feet from the property line which is further away than the retaining wall which mind you is a five or six foot wall plus a six foot wrought iron fence; that is a substantial structure blocking the Blalocks view. He said they don't have a problem with that and they aren't here to cast aspersions on what their neighbors have; only to point out that they are interested in similar treatment. He said as far as substantial property rights, they simply want the same as everyone else out there and to be able to build and have the ... back to uniformity, Mr. Duell has taken two lots and combined them and built a substantially larger structure than any other property out there, so there is already some lack of conformity. He said this is only going to be eleven feet into the setback; it is not

going to be a substantial difference. He said the pictures he showed them from the street you really can't see this. He said obviously the rear neighbor can see it. He said he did have a question and that is in talking with his clients and Mr. Miller about what would be necessary to build an additional one car garage rather than a two car garage. He said that would still require a four or five foot Variance but it wouldn't be the eleven feet and asked how they could handle that. He said again, the Blalocks have offered to meet with them but no one has taken them up on the offer but he does have the possibility of a compromise if that is something they can put on the table in lieu of the eleven foot encroaching into the setback to a four or five foot encroachment setback.

Mrs. Rector said in the past when this has been done, and Attorney Doll can give his opinion as well, but they have allowed the petitioner to amend the application and plot plan and show the Board what they propose to do and then initial all the changes and ask the Board to vote to amend it.

Terry Dayvolt asked if there are any other encroachments into the twenty-five foot setback in this subdivision.

Chris Wischer said so as far as encroachments, he is not aware of any Variances that have been granted in the past for anyone there but as far as things in the setback – when we talked about reasons for the setback, green space was mentioned and aesthetics. He said green space as far as yard; if you look at the pictures he gave them there are improvements within the setback. He said they are not the kind he guesses requires a Variance because they are not a “structure” but they have taken away green space. He said some of those folks have pools that take up a substantial amount of green space but as far as encroachments into the setback, yes there are plenty as he can see but they just didn't require by code a Variance.

Doris Horn said he did not go before the board (architectural review) and did he read anything about the covenants.

Mr. Wischer said Mr. Blalock could answer for himself but that would come after whether the Variance was granted.

Doris Horn said the reason she asked is because she has a lot at Christmas Lake Village and regardless of what she wants to build up there it has to go in front of their board period and they will approve if it is big enough and you go with their covenants and laws.

Mr. Wischer said right, but these covenants don't have a setback restriction in them so their covenants are simply size; whether it is large enough. He said something there is a restriction against something too small in that subdivision. He said it is also whether it has the proper style and everything and all of that shouldn't be an issue because if they grant them the Variance they will still have to go through the process and work with them on architectural but they shouldn't deny it because it is too close to the property line because that isn't in their covenants.

Doris Horn asked how tall the building will be. She said the retaining wall and wrought iron fence might be six feet tall. She said in the back yard they will be looking at a roof instead of landscaping or a pool.

Brian Blalock said it will be the same height as the house because the roof line will just continue on.  
Doris Horn said you are talking twenty feet.

Chris Wischer said it will be 21 feet closer than the existing and it will be eleven feet closer than it could be if it was build up to the line and it will be still pretty far from their house which is set back pretty far and there will be green space around the garage.

Doris Horn said she is asking for the height because they will be looking at is a roof out their back yard.

Chris Wischer said it is the same as the existing but through the trees.

Morrie Doll asked if anyone knows if there is a restrictive covenant against detached structures.

Brian Blalock said there is a restriction; they are not permitted.

Chris Wischer said obviously to allow the driveway to continue the garage needs to be part of the house and it will look better than anything else.

Mrs. Rector said the options are for the Board to vote on this the way it is or if they want to amend the plot plan they can, but if it is denied they can't come back for six months.

Mike Winge said in his view he thinks they have done this countless times for other people and we would be discriminating against them if we have an issue that we had before and has the same requirements the others have met. He said they also have a teenager coming up as well and when you buy cars today you are buying a \$40,000 - \$50,000 vehicle and who wants to set them in the driveway. He said he is trying to look at this in a positive stand.

Chris Wischer said he thinks it would be safe to say they have done this before; he has represented people before several BZA's and setback Variances are routinely granted unless someone comes out against it for some reason it is not really an issue and so he did agree with what he is saying.

Terry Dayvolt said the thing he has is do they grant all the other neighbors a Variance to build a garage in their back yard too.

Mike Winge said the thing is most of them already have three or four car garages.

Terry Dayvolt said yes but they meet the setbacks.

Mike Winge said how many times we have done that for people and these folks need it and want it. He said they bought the house as it is.

Doris Horn said no, they built this house.

Terry Dayvolt said so was he not planning for more cars then or what.

Chris Wischer said that was thirteen years ago when he built the house and they were a lot younger and they didn't have a child and they built a house they wanted to make into a home and they now have to either add on or move and they don't want to move.

Attorney Doll said obviously they can ask the Board to table this and not vote tonight if they are interested in amending the application and taking it down from a two car garage to a one car garage which encroaches less in the rear yard setback. He said they could ask for that to be done tonight – he doesn't know what the Board will do, but it seems to him they would probably want to know if his neighbors will be upset with that or less upset with that.

Mike Winge asked if they withdraw do they have to wait six months to come back.

Attorney Doll said if they ask or the Board tables this, the application is still pending before the Board and it is not precluded from being considered at the next meeting of the BZA. He said if it is voted upon and turned down then it is precluded for six months.

Mr. Wischer asked if that six month prohibition can be waived by the Board.

Attorney Doll said it has never been waived during his time as attorney.

Mrs. Rector said it has never been waived as far as she can remember.

Attorney Doll said the only time requirements that have been waived is in referring rezoning petitions to the Commissioners. He said if they want to take a minute to confer with his client he can or does he want the Board to act on the application as it stands.

Attorney Wischer submitted a plot plan showing the reduction of the Variance.

Attorney Doll said the question is does he want the Board to adopt this by vote or if he wants to table this and talk to the neighbors to see if that satisfies them.

Doris Horn said she does agree we have approved things like this before but we have never had remonstrators like this and she was on this Board before and that even as a Board if you think this is right you have to stop and think is this good for the subdivision and is it good for the neighbors selling their homes.

Mike Winge said we aren't looking at it from a realtor's standpoint.

Attorney Doll said the only criteria they can consider is Article 26 subsection 2 of the Ordinance and that is the only criteria they can consider as has been talked about a lot during this presentation. He said so, to the applicant, do you want to ask to have it amended and voted on tonight, table it so it can come before the Board next month in order to speak with the neighbors or what would you like to do.

Brian Blalock said they have offered several times to meet with the board (neighbors) and they have shown an unwillingness to listen to existing proposal and he can't understand how that would change if it was tabled. He said they have been excluded from the conversations that one member has been going around the neighborhood having so if they are precluded from applying again in six months he can't see how with the way they have been treated in the neighborhood how anything other than this compromise would work so he would like to amend.

Chris Wischer said so the reality is Blalocks can't build any additional garage, even a single car garage to house this new car, without a Variance. He said even a single car garage, according to this amended plot plan requires a four foot Variance and so he would like to submit this plot plan showing the one car garage and ask the Board to accept this as an amendment and request a four foot Variance which will leave 21 feet of free unencumbered space between the garage and the property line. He said again, this is an example where they could do something less – they won't have a four car garage they will have a three – but they will still have to have a Variance in order to do that.

Attorney Doll said but it is only a four foot Variance.

Chris Wischer said it is only a four foot Variance and the setback would be relieved from 25 feet to 21 feet.

Mrs. Rector passed around the amended plot plan but said to make sure it gets back to her for the record.

Terry Dayvolt asked if they can accept that without it being...

Morrie Doll said they will have to vote to accept the amendment of the application and then they would have to open the floor back up for comments concerning the amended application.

Terry Dayvolt said so without that going out in the packet with the registered mail to the homeowners, they can't see this.

Morrie Doll said it is less burdensome but sure they can pass this around and anyone can see it but it is a less intensive use of the site than what was mailed out; it will take a smaller Variance so as a consequence of that it doesn't affect the due process of those here to remonstrate against it. He said they need to be able to see it if they ask and they need to be able to speak to it if they ask. He said what is before the Board is a motion to amend the application; not approval yet and somebody has to make a motion. He said it is not a yes or no on the application; it is a yes or no on the amendment.

Mike Winge made a motion to allow the amendment. The motion was seconded by Mike Moesner. Terry Dayvolt voted against the motion and all others voted for the motion, therefore the amendment was approved.

Attorney Doll asked the petitioners if there was any more presentation on the amendment before they open the floor back up to remonstrators.

Chris Wischer said to reiterate, this is a less intrusive Variance by 7 feet and it is a compromise to allow them to meet their existing needs and ask for approval and will listen to what the other folks have to say about.

Attorney Doll asked if the remonstrators wish to see the amendment.

An unidentified voice said they have been handed a copy by Mr. Miller.

Attorney Doll asked if there is anyone in the room who wishes to see this that has not already seen it.

Jeff Valiant said he was going to call a five minute recess in order to give them a chance to review the drawing and the Board will reconvene at 7:22 p.m.

Jeff Valiant called the meeting back to order at 7:22 p.m. He asked if they have a spokesperson.

Doug Duell said as a group they still oppose the Variance. He said he wants to correct a couple of things about the communication they have had amongst the neighbors. He said when the neighbors got the certified letter about the variation he was out of town and his wife contacted him about it. He said a day or two after that he had a conversation with one of the neighbors and he asked the question if someone had gone over and spoke to the Blalocks and no one had. He said this is a very difficult thing to confront your neighbor and he thought before they go to a Board meeting and they don't know it is opposed, someone should go over and talk to them. He said the next day the neighbors called and elected him to go over and talk to them. He said Brian and he have been friends and have a business relationship that has lasted over fifteen years and so before any emails were sent out he did contact Brian and told him there was some opposition to the project. He said they had about three phone conversations, the first two friendly and the last one not so but he tried as best he could to communicate to him the neighbors' concerns. He said

some of them have been brought up tonight and some were minor that haven't been brought up but they are neighbors and they have concerns.

Attorney Doll asked this Board has to understand why they are opposed to the amended application. He asked him to give the reasons why he personally or the group he is speaking for is opposed to the reduced plan which encroaches four feet into the setback. He asked why they are opposed to that.

Mr. Duell said the setback is there for a reason and the twenty five feet is the minimum and some have more so it is uniformity of green space in this case behind the house.

Attorney Doll said you think a four foot encroachment or utilization out of the twenty five foot distance is going to be discernable or damaging or somehow or another cause a hardship to the other property owners in the neighborhood – four feet as opposed to eleven feet.

Mr. Duell said yes he does. He said to the neighbor right behind this they have what they have as far as pool deck back there and that is where they enjoy their time and their family does and their friends that come over. He said they are just looking at a shingled roof and it isn't eleven feet tall – the peak of a roof is twenty feet tall.

Mike Winge said that is what they are looking at now isn't it.

Mr. Duell said that is correct but it is going to be closer.

Mrs. Rector said so he thinks a four foot encroachment with a garage is more than a large pool with concrete when you are talking about green spaces.

Mr. Duell said yes.

Mrs. Rector said it looks like the pools take up more green space than what four feet of a garage extension would be.

Mr. Duell said he thinks to answer that questions, pools are better than green spaces – they are more beautiful to look at. He said what would you rather have in your back yard – grass or pools.

Mrs. Rector said some people don't want pools.

Attorney Doll said so he is opposed to it because of the green space infringement and he thinks the four foot utilization would cause them to suffer. He said he isn't trying to put words in his mouth but he is trying to make a good record for the Board to evaluate this amended application.

Mr. Duell said in his opinion the law is the law. He said it is twenty five feet and he gets there are Variances and he understands that but when this house was built they could have had a three car garage and fit within the setbacks.

Attorney Doll said he doesn't know that.

Mr. Duell said the other neighbors have that and they all built houses with three car garages.

Attorney Doll said he understands and thank you he answered his question.

Kathy Greaney said she thought she let them know she is not unreasonable and it is a matter of opinion whether or not they think it is a good use of green space or not for a pool as opposed to a garage and she doesn't want to argue about that. She said when she looked at the ordinance is they are a governing Board on behalf of Warrick County and the language is very specific and it is not discretionary language; it doesn't say "may not" it says "shall not" and so if it doesn't meet that peculiar size or shape that makes it impracticable for that setback to be adhered to then they shall not grant it and she thinks that is where they are with it; it shall not be granted. She said she didn't even think they needed to show up tonight to argue about it because based on the first hurdle alone you can't get to the next subsection. She said with that said, she is reasonable and she isn't going to lose any sleep over it if they grant the four feet and neither will her husband. She said in terms of just speaking her piece, the language says you shall not grant it and she thinks that is where they are on behalf of the association.

Attorney Doll said again, there isn't a specific reason other than the law is the law – that is your position.

Mrs. Greaney said it is.

Ascertaining there were no other remonstrators or question from the Board the Chairman called for rebuttal.

Chris Wischer said they are talking about the Blalocks wanting the reasonable use of their property. He said there are only a couple of homes in that subdivision that don't have at least a three car garage and in order to even be able to build at least a three car garage (a one car extension) they need a Variance. He said they are asking the minimum Variance needed in order to get the enjoyment and use of the property that they would like which is not unlike anyone else. He said their need for a three car garage didn't exist when they built the home; they were much younger and had different needs. He said if they had thought they could have moved the whole house forward four feet but they didn't think ahead and they shouldn't be penalized for that. He said the setbacks are there for a reason; the setbacks in the "R" zonings is the same no matter where you are, however there are different circumstances at play in every property and every subdivision and that is why you have a Variance because they are not all the same. He said he doesn't think this will be discernable – four feet – we can argue about whether eleven feet would have been but four feet – is that going to interrupt a nice day at the pool. He said those folks will be just a few feet from the Blalocks property but are they going to be overly – are they not going to enjoy their time in the pool because there is a garage four feet closer than what otherwise would be allowed. He said the law is the law is not a valid argument because we have this thing called a Variance which allows a relaxation of that, so we think this is a proper compromise. He said it is something that the Blalocks are willing to live with; it isn't everything they want; they have three cars now and when the time comes for their son they will have to figure out what to do but for now it is good enough and they appreciate your time and consideration and ask for your approval of this relaxed request.

Jeff Valiant called for questions from the Board.

Doris Horn asked if they would consider parking their car in the driveway even though they were allowed to park two cars outside.

Mr. Blalock said he is afraid of vandalism.

Chris Wischer said just like anyone else, he thinks it is a concern and he would rather not.

Mr. Blalock said he is concerned about vandalism. He said they did have a situation where we had people walking between the houses at night and so a car sitting outside does kind of draw attention.

Chris Wischer said he thinks it is fair. He said he lives in Lakeridge and they have had reports of cars being broken into there and you are always at risk of leaving your car outside. He said he is lucky because he just has two cars and he doesn't know if he could squeeze a third one in but he doesn't feel it unreasonable to want to keep your cars inside even though you could park them outside.

Thomas Southwood said he has lived in this subdivision longer than anybody; 20 years and they have never had any vandalism. He said they have never had anybody break into any cars or into their homes. He said it has never happened and a point of order for receiving this tonight and wanting the Board and the officers to make a decision on this in such a short period of time when it could have been brought to them before. He said it certainly could have been brought to the architectural review committee but it was not. He said until tonight they didn't even know this is what the Blalocks and Barrington had in mind.

Mike Winge said but he did say tonight that this wouldn't be acceptable.

Mr. Southwood said that is exactly right.

Chris Wischer said the Blalocks didn't know that is what they had in mind until they knew they had opposition and then they think about what they can live with and that is what they came up with and they didn't have an opportunity to share it with them but that is where we are.

Ascertaining there were no further questions from the Board the Chairman called for a motion.

Attorney Doll said the only thing before the Board right now is the amended application.

Mike Winge made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is the location of the existing house requires a Variance for any garage addition, whether it is a single garage or otherwise so it is the size of the property and the location of the house on that particular lot which constitutes a hardship which precludes the current owner from being able to have a three car garage when most of many in the neighborhood have a three car or more garage and he did not create the size of the lots they were laid out by the developer of the property and he may not have had any say on the location of the house on the lot and by reducing the Variance request to a single car garage he has minimized the requested deviation from the County setback requirements so as not to substantially create a detriment to adjacent property and the surrounding neighborhood.

4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application as amended is subject to the terms contained therein and the plans on file subject to the following additional conditions:
  - a) Subject to an Improvement Location Permit being obtained.
  - b) Subject to a Building Permit being obtained.
  - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
  - d) Subject to all utility easement and facilities in place.

The motion was seconded by Mike Moesner. Roll call vote was taken with Tina Baxter, Terry Dayvolt and Doris Horn voting against the motion and Mike Moesner, Jeff Willis, Mike Winge and Jeff Valiant voting for the motion therefore the motion to approve carried.

Mrs. Rector said they can pick up their approval on Wednesday.

#### **ATTORNEY BUSINESS:**

Attorney Doll said he had no business that requires attention tonight. He said we do have a hearing on Friday in the Prime Foods case where Warrick County is challenging the propriety of the law firm of Faegre, Baker and Daniels as representing Warrick Ruined and those under the Warrick Ruined name plate as to their remonstrance against this for judicial review. He said that is because Faegre, Baker and Daniels has and concurrently is doing work for Warrick County for the Economic Development and the Economic Redevelopment Board which some of the Commissioners feel is a conflict. He said so they

have objected to that and they will have a hearing starting at 9 am on Friday in Circuit Court. He said they also have objected to the petition for judicial review filed by Anthony Long because it is 63 pages long and it reads like an epistle out of the New Testament as opposed to a legal document and they have asked the court to order Mr. Long to follow the pleading rules and to refile an amended petition. He said there is another issue still technically pending on Friday in which Warrick Ruined asked the judge to issue a stay to preclude Prime Foods from starting construction while the appeal is pending. He said they believe there is some compromise between Warrick Ruined and Prime Foods where they are going to mutually agree to some stay of some things for some time. He said that is about all he knows about it and it doesn't affect this Board; that is Warrick Ruined and Prime Foods battle and that may or may not occur on Friday as well. He said the judge did rule that Warrick County retains jurisdiction and the trial will be here.

#### **EXECUTIVE DIRECTOR BUSINESS:**

Mrs. Rector said she has no business.

Terry Dayvolt said he would like a clarification on what they just did.

He said they had both sides here.

Attorney Doll said that is the way it is supposed to be.

Terry Dayvolt said yes, but the one side asked them to go by the law and what he has always thought was when somebody would come in and somebody had previously built the house three owners ago and they came in and had a problem that was when this Board tried to rectify the problem, not for somebody that had built the house and was living in it. He said the problem wasn't created by any person...

Attorney Doll said he doesn't think the Board violated the law; that is the purpose of the Variance.

Terry Dayvolt said he wasn't saying that.

Attorney Doll said their job is to listen to the facts and each one of these is different. He said if the applicant had specifically staked out that house – let me say this, if you look at the drawings that were submitted, if that house had been shifted four feet towards the street it would have still been legal on that lot and we wouldn't have needed a Variance.

Mrs. Rector said this Board just approved a Variance just like this a few months ago for a man who had built his house and he wanted to make it larger for him and his wife and kids; you did the exact same thing.

Mike Winge said that is what he was trying to say earlier.

Several members spoke at once.

Terry Dayvolt said what he is asking is, are they doing right by the other people in these situations. He said what if every other – all other eighteen come in and say they want to encroach say ten feet in the back yard.

Mrs. Rector said she thinks in this case she would rather have four feet of a garage in her neighbor's back yard than a pool right up at her property line with the whole family out there.

Terry Dayvolt says he understands that but he is just trying to get...

Doris Horn said she would rather see...

Jeff Valiant said he would rather not see...

Mike Moesner said his concern is if he were looking at the neighbors all he would see is a wall and a fence and trees and he can't see anything and that is the reason he felt he had a right to build his garage.

Discussion ensued over walls and fences in easements and the need for permits.

Attorney Doll said within the limits of the rules in that section of our ordinance that sets forth the criteria you have discretion. He said you can't reach out to other issues – I don't like this color house or things like it affects the price – it has to be within those limitations, but that is your sole purpose, that is why you are here. He said that is what this Board's power and duty and responsibility is to hear the facts and where justified, grant a Variance if necessary. He said this was obviously a tough choice; look at the vote, four to three.

Mike Winge said most of the time the homeowners will get a general area where the house will go and the contractor in charge is the man who puts it there so it isn't like they created it because they had the house built. He said they had to rely on someone else.

Jeff Valiant said the house was built where it was on the lot...

Mike Winge said and if they had moved it forward four feet ...

Jeff Valiant said but if you build a pool that takes up the whole back yard you are fine and that is where he has an issue.

Tina Baxter said they built in this area that they have subdivision rules.

Attorney Doll said we have no authority over those rules.

Tina Baxter said she knows we have no authority over but why then go in and want to change all the rules that they make.

Attorney Doll said we didn't.

Mrs. Rector said they didn't have any rear yard setback rules. She said they have side yard and front yard but no back yard.

Tina Baxter said they didn't bring that up.

Mrs. Rector said they did say they didn't have the restrictions for the rear yard.

Attorney Doll said he asked about whether they could have a detached accessory structure and everybody said, no you can't. He said realize in our ordinance if they did allow detached accessory structures he could have built this garage three feet off the property line.

Terry Dayvolt said yes and here is the other question, say this goes to civil ...

Attorney Doll said which one, an appeal of the decision they made tonight or a private suit.

Terry Dayvolt said a private suit against him for the covenants of the subdivision.

Jeff Willis said that is their issues.

Terry Dayvolt said but when they say the County board approved this so it is okay with the County...

Attorney Doll said first of all from the presentation to the Board tonight there is no violation of a restrictive covenant. He said nobody said there is...if there was a violation of a restrictive covenant, we would have never had the application because what good would it do to come in and get a Variance if it is going to violate the restrictive covenants. He said they would never have been here and so there is no violation of the restrictive covenants. He said the only prohibition against this addition was the setback, the County statute. He said that is the only thing that kept this from being done. He said what he thought appropriate was the applicant said fine I understand and I will minimize my burden and reduce it from a two car garage to a one garage and instead of eleven feet it is only going to be four feet.

Mike Winge said and the neighbors didn't want to budge an inch.

Attorney Doll said and they couldn't articulate a reason why they were still opposed to it, in his opinion.

Mike Winge said another thing they didn't look at; Mr. Duell came up here and said this should be within the boundaries of the lot but he bought a second lot because he wanted to go over the boundary and have a bigger house.

Attorney Doll said that is his prerogative.

Terry Dayvolt said he just wanted to get his mind straight.

Attorney Doll said they had the power to hear the facts and decide if they think it justifies a Variance but otherwise there is no purpose in this Board's existence.

Being no other business the meeting adjourned at 7:55 p.m.

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Jeff Valiant, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held April 24, 2017.

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Sherri Rector, Executive Director